

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

C.A.

v.

VILLANOVA UNIVERSITY; COLLEGE
HALL ASSOCIATES, L.P. d/b/a COLLEGE
HALL APARTMENTS a/k/a “THE
COURTS”; MARKS & COMPANY USA,
INC., d/b/a MARKS & COMPANY; ELIJAH:
JOSEPH KATZENELL; JUAN
EGUIGUREN; and ANDREW POLUN

NO. 2:24-CV-04434-KNS

ORDER

AND NOW, this _____ day of _____, 2025, after consideration of Defendant, Elijah Katzenell’s partial Motion to Dismiss, and any response thereto, it is **ORDERED** that the Motions are **GRANTED**. Count V of the Second Amended Complaint is **DISMISSED WITH PREJUDICE**.

BY THE COURT:

Hon. Kai N. Scott

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JOSEPH KATZENELL; JUAN
EUGUIGUREN; and ANDREW POLUN

NO. r

**DEFENDANT'S PARTIAL MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED
COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

Defendant, Elijah Katzenell, by and through his attorneys, Goldberg, Miller & Rubin, P.C., hereby moves this Honorable Court for dismissal of Count V of Plaintiff's Second Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Defendant respectfully requests this Honorable Court grant the instant Partial Motion to Dismiss Plaintiffs' Second Amended Complaint in his favor as set forth in the attached Proposed Order for the reasons set forth in the Defendant's Brief in Support of Partial Motion to Dismiss.

GOLDBERG, MILLER & RUBIN, P.C.

BY: /s/ Eamon Merrigan

EAMON MERRIGAN, ESQUIRE

Pa. Attorney Id. No. 87920

GOLDBERG, MILLER & RUBIN, P.C.

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VILLANOVA UNIVERSITY; COLLEGE
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NO. 2:24-CV-04434-KNS

**DEFENDANT ELIJAH JOSEPH KATZENELL’S PARTIAL MOTION TO DISMISS
PLAINTIFF’S SECOND AMENDED COMPLAINT**

Defendant, Elijah Katzenell, by and through his attorneys, Goldberg, Miller & Rubin, P.C., has moved this Honorable Court for dismissal pursuant to Federal Rule of Civil Procedure 12(b)6 and respectfully submits the instant Brief in Support of Partial Motion to Dismiss.

I. Procedural History

Plaintiff filed their original Complaint in the Court of Common Pleas of Philadelphia County on August 22, 2024. ECF # 1, Ex. A. Villanova University removed the matter to the Eastern District of Pennsylvania the next day. *Id.* Plaintiff thereafter filed her First Amended Complaint in this Court on September 11, 2024. ECF # 5. Plaintiff filed a Second Amended Complaint (“SAC”) on November 12, 2024, pursuant to stipulation amongst the parties that also extended the Defendants’ response period to December 12, 2024. ECF # 21.

II. Alleged Facts in Second Amended Complaint

In August 2022, Plaintiff was sophomore at Villanova University, residing on campus. ECF # 21 ¶¶ 18-20. The evening following the first day of classes, August 24, 2022 of that academic year, is historically referred to as “syllly night,” a reference to “syllly week,” a time when “students

review their course syllabi with their professors.” *Id.* ¶¶ 29-31. On “silly night,” some students, “including underaged students, attend parties [and] drink alcohol served to them by other students, some of legal age, others not of legal age, causing them to become intoxicated and act in an irrational manner.” *Id.* ¶ 32. Plaintiff went to The Courts, an off-campus apartment building that caters to Villanova students, that evening and “imbibed alcoholic beverages served to her from within multiple apartments” despite being under 21 years old at the time. *Id.* ¶¶ 34-36. Plaintiff claims she “became highly intoxicated” while at The Courts. *Id.* ¶¶ 61-65. She returned to her campus residence, Sheehan Hall, sometime after midnight in the company of her roommate. *Id.* ¶ 66. However, Plaintiff did not return to her own room in Sheehan Hall; rather, she went to the room of Katzenell at his invitation, where she imbibed more alcohol. *Id.* ¶ 67. Plaintiff then continued drinking but does not recall the rest of the evening. *Id.* ¶ 71. Per Plaintiff, Katzenell later advised Plaintiff that they had sex. Mr. Katzenell was arrested and ultimately pled guilty to Sexual Assault. *Id.* ¶¶ 72-74. The Second Amended Complaint also lists the charges that were brought against Mr. Katzenell including those that were dismissed (18 Pa.C.S. §3126 §§ A4 and 18 Pa.C.S. § 3126 §§ A1) or withdrawn (18 Pa.C.S. § 3121 §§ A3) in addition to the charge he pled guilty to (18 Pa.C.S. §3124.1). *Id.* ¶ 73, *see also* Criminal Docket attached as Exhibit A.

Count V of Plaintiff’s Second Amended Complaint seeks to bring private causes of action for the criminal charge Mr. Katzenell ultimately pled guilty to and the charges withdrawn or ultimately dismissed. Plaintiff has also brought claims for Assault (Count VI), Battery (Count VII), Intentional Infliction of Emotional Distress (Count VIII), and Negligent Infliction of Emotional Distress. *See Id.*

III. Standard of Review

On a motion under Rule 12(b)(6), dismissal is proper if a party alleges facts, which if accepted as true, fail to “state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). In order to meet the “facial plausibility” requirement, a plaintiff must plead “factual content that allows the court to draw the *reasonable inference* that the defendant is liable for the misconduct alleged.” Id (emphasis added). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.... Factual allegations must be enough to raise a right to relief above the speculative level.” Twombly, 550 U.S. at 555.

IV. Argument

a. Count V must be dismissed as Plaintiff cannot bring private causes of action for the cited statutes.

An individual cannot maintain a private cause of action for the violation of a statute unless one is expressly provided for in the statute or can be implied. *See* Estate of Witthoef v. Kiskaddon, 557 Pa. 340, 345, 733 A.2d 623, 626 (1999). “The United States Supreme Court has offered a three-prong analysis to assist in determining whether a private remedy is implicit in a statute not expressly providing one.” *Id.* citing Cort v. Ash, 422 U.S. 66, 45 L. Ed. 2d 26, 95 S. Ct. 2080 (1975). The three factors under the Cort decision are:

first, is the plaintiff ‘one of the class for whose *especial* benefit the statute was enacted,’ -- that is, does the statute create a ... right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff?

Courts have time and again held that criminal statutes do not create private causes of action. Graf v. United States Army, No. 1:23-CV-02133, 2024 U.S. Dist. LEXIS 4532, at *7 (M.D. Pa. Jan. 9, 2024) citing Davis v. Warden Lewisburg USP, 594 Fed. Appx. 60, 61 n.3 (3d

Cir. 2015) ("§ 242 is a criminal statute, through which no private cause of action is created."); Greenblatt v. Klein, 634 Fed. Appx. 66, 69 (3d Cir. 2015) ("Finally, we agree that there is no private cause of action under 18 U.S.C. § 1001."); Carpenter v. Young, No. Civ.A. 04-927, 2005 U.S. Dist. LEXIS 48374, 2005 WL 1364787, at *7 (E.D. Pa. June 1, 2005) ("[P]laintiff may not maintain a private cause of action based on violations of criminal provisions of the Bankruptcy Code [including 18 U.S.C. § 153]."); Pankey v. Webster, 816 F.Supp. 553, 559 (W.D. Missouri 1993) ("18 U.S.C. § 4 defines a criminal offense and does not provide civil complaints with a private right of action. Thus, plaintiff cannot base a civil cause of action on 18 U.S.C. § 4, and cannot invoke that statute as a jurisdictional basis for her present complaint." (internal citations omitted)) (citing Dugar v. Coughlin, 613 F.Supp. 849, 852 n.1 (S.D.N.Y 1985)); Dugar, 613 F.Supp. at 852 n.1 ("Sections 241, 242, and 245 relate to deprivation of civil rights, however there is no private right of action under any of these statutes."); Risley v. Hawk, 918 F.Supp. 18, 21 (D.D.C. 1996) ("First, 18 U.S.C. [§ 113] define[s] certain acts . . . as criminal offenses. Such criminal offense provisions do not create a private cause of action.") (citing Lundt v. Hodges, 627 F.Supp. 373, 375 (N.D. Iowa 1985)).

The statutes Plaintiff references in Count V are collectively attached as Exhibit B. *See* Exhibit B or *see* 18 Pa.C.S. §3126 §§ A4, 18 Pa.C.S. § 3126 §§ A1, 18 Pa.C.S. § 3121 §§ A3, and 18 Pa.C.S. §3124.1. None of the statutes expressly reference a private cause of action nor can an intent to create a private cause of action be implied from the language of the statutes. Moreover, the statutes are not an integral part of some broader legislative scheme nor are the statutes intended to create a new right in favor of Plaintiff. Rather, these are relatively unambiguous statutes, in a long line of others, to criminalize specific forms of violence. The statutes exist entirely in a vacuum beyond the fact that they are listed with a subchapter of similar statutes that have also never been held to provide for private rights of action. Count V should be dismissed with prejudice.

V. Conclusion

Defendant respectfully requests that this Honorable Court grant the present Motion and enter the proposed order.

GOLDBERG, MILLER & RUBIN, P.C.

BY: /s/ Eamon Merrigan
EAMON MERRIGAN, ESQUIRE
Pa. Attorney Id. No. 87920
GOLDBERG, MILLER & RUBIN, P.C.
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NO. 2:24-CV-04434-KNS

CERTIFICATE OF SERVICE

I, EAMON MERRIGAN, ESQUIRE, do hereby certify that service of a true and correct copy of the foregoing Motion Pursuant to Federal Rule of Civil Procedure 12(b) have been forwarded to all counsel of record via electronic notification.

GOLDBERG, MILLER & RUBIN P.C.

BY: _____/s/
Eamon Merrigan, Esquire
Attorney for Defendant

EXHIBIT A

COURT OF COMMON PLEAS OF DELAWARE COUNTY**DOCKET**

Docket Number: CP-23-CR-0000137-2024

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

Elijah Joseph Katzenell

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CASE INFORMATION

Judge Assigned: Brennan, Mary Alice Date Filed: 01/10/2024 Initiation Date: 08/25/2022
OTN: R 426669-5 LOTN: Originating Docket No: MJ-32243-CR-0000247-2022
Initial Issuing Authority: Sloan Walker Final Issuing Authority: Sloan Walker
Arresting Agency: Villanova University Police Dept Arresting Officer: Gownley, Michael
Complaint/Citation No.: 2022-001375 Incident Number: 2022 001375
County: Delaware Township: Radnor Township
Case Local Number Type(s) Case Local Number(s)

STATUS INFORMATION

<u>Case Status:</u> Closed	<u>Status Date</u>	<u>Processing Status</u>	<u>Complaint Date:</u> 08/25/2022
	09/16/2024	Sentenced/Penalty Imposed	
	09/16/2024	Awaiting Sentencing	
	03/25/2024	Awaiting Trial	
	02/23/2024	Awaiting Trial Scheduling	
	02/21/2024	Awaiting Pre-Trial Conference	
	01/10/2024	Awaiting Formal Arraignment	
	01/10/2024	Awaiting Filing of Information	

CALENDAR EVENTS

<u>Case Calendar</u>	<u>Schedule</u>	<u>Start</u>	<u>Room</u>	<u>Judge Name</u>	<u>Schedule</u>
<u>Event Type</u>	<u>Start Date</u>	<u>Time</u>			<u>Status</u>
Formal Arraignment	02/21/2024	8:00 am			Scheduled
Pre-Trial	03/25/2024	9:00 am		Judge Mary Alice Brennan	Scheduled
Conference					
Trial	05/15/2024	9:00 am		Judge Mary Alice Brennan	Continued
Trial	06/24/2024	9:00 am		Judge Mary Alice Brennan	Continued
Trial	09/16/2024	9:00 am		Judge Mary Alice Brennan	Scheduled

DEFENDANT INFORMATION

Date Of Birth: 08/02/2002 City/State/Zip: Clarksburg, MD 20871

CASE PARTICIPANTS

<u>Participant Type</u>	<u>Name</u>
Defendant	Katzenell, Elijah Joseph

BAIL INFORMATION

Katzenell, Elijah Joseph **Nebbia Status: None**

<u>Bail Action</u>	<u>Date</u>	<u>Bail Type</u>	<u>Originating Court</u>	<u>Percentage</u>	<u>Amount</u>
Set	12/29/2023	Unsecured	Magisterial District Court		\$1,000,000.00

CHARGES

COURT OF COMMON PLEAS OF DELAWARE COUNTY**DOCKET**

Docket Number: CP-23-CR-0000137-2024

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CHARGES

<u>Seq.</u>	<u>Orig Seq.</u>	<u>Grade</u>	<u>Statute</u>	<u>Statute Description</u>	<u>Offense Dt.</u>	<u>OTN</u>
1	2	F2	18 § 3124.1	Sexual Assault	08/25/2022	R 426669-5
2	3	M1	18 § 3126 §§ A4	Indecent Assault Person Unconscious	08/25/2022	R 426669-5
3	4	M2	18 § 3126 §§ A1	Indec Asslt-W/O Cons Of Other	08/25/2022	R 426669-5
99,999	1	F1	18 § 3121 §§ A3	Rape Unconscious Victim	08/25/2022	R 426669-5

DISPOSITION SENTENCING/PENALTIESDispositionCase EventSequence/DescriptionSentencing JudgeSentence/Diversion Program TypeSentence ConditionsDisposition DateOffense DispositionSentence DateIncarceration/Diversionary PeriodFinal DispositionGrade SectionCredit For Time ServedStart Date**Sent to Common Pleas (Lower Court)**

Defendant Was Not Present

Lower Court Disposition

01/09/2024

Not Final

1 / Sexual Assault

Sent to Common Pleas (Lower Court)

F2

18 § 3124.1

2 / Indecent Assault Person Unconscious

Sent to Common Pleas (Lower Court)

M1

18 § 3126 §§ A4

3 / Indec Asslt-W/O Cons Of Other

Sent to Common Pleas (Lower Court)

M2

18 § 3126 §§ A1

99,999 / Rape Unconscious Victim

Sent to Common Pleas (Lower Court)

F1

18 § 3121 §§ A3

Proceed to Court

Defendant Was Not Present

Information Filed

02/21/2024

Not Final

1 / Sexual Assault

Proceed to Court

F2

18 § 3124.1

2 / Indecent Assault Person Unconscious

Proceed to Court

M1

18 § 3126 §§ A4

3 / Indec Asslt-W/O Cons Of Other

Proceed to Court

M2

18 § 3126 §§ A1

99,999 / Rape Unconscious Victim

Withdrawn

F1

18 § 3121 §§ A3

Guilty Plea - Negotiated

Trial

09/16/2024

Final Disposition

1 / Sexual Assault

Guilty Plea - Negotiated

F2

18 § 3124.1

Brennan, Mary Alice

09/16/2024

Probation

Max of 7.00 Years

Other

Undergo DNA analysis pursuant to 42 Pa.C.S.A. Section 9791 et seq.

Comply with special rules and regulations of Adult Probation and Parole governing sexual offenders.

Register pursuant to 42 Pa.C.S.A. Section 9795.1 and Section 9791 et seq. Tier 3 Lifetime.

Submit to DNA Testing - Pay Cost

Placed on electronic monitor for 12 months; comply with all program regulations.

Comply with rules and regulations governing Probation and or Parole including sex offenders and EMP.

COURT OF COMMON PLEAS OF DELAWARE COUNTY**DOCKET**

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DISPOSITION SENTENCING/PENALTIESDispositionCase EventDisposition DateFinal DispositionSequence/DescriptionOffense DispositionGrade SectionSentencing JudgeSentence DateCredit For Time ServedSentence/Diversion Program TypeIncarceration/Diversionary PeriodStart DateSentence Conditions

Comply with following directive(s) of Court: First 12 months on House Arrest. Stay away from Villanova University Maintain drug/alcohol treatment as well as mental health treatment. Supervision may transfer to Montgomery County, Maryland if and when accepted.

2 / Indecent Assault Person Unconscious Brennan, Mary Alice	Dismissed 09/16/2024	M1	18 § 3126 §§ A4
3 / Indec Assault-W/O Cons Of Other Brennan, Mary Alice	Dismissed 09/16/2024	M2	18 § 3126 §§ A1
99,999 / Rape Unconscious Victim Brennan, Mary Alice	Withdrawn 09/16/2024	F1	18 § 3121 §§ A3

COMMONWEALTH INFORMATION**ATTORNEY INFORMATION**

Name: Delaware County District Attorney's
Office
District Attorney

Name: Arthur T. Donato Jr.
Private

Supreme Court No:

Supreme Court No: 031666

Phone Number(s):

Rep. Status: Active

610-891-4168 (Phone)

Phone Number(s):
610-565-4747 (Phone)

Address:Address:

Delaware County Courthouse
201 West Front Street
Media, PA 19063

Law Ofc Arthur Thomas Donato Jr.
216 W Front St 2nd Fl
Media, PA 19063-3101

Representing: Katzenell, Elijah Joseph

ENTRIES

<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
1	12/29/2023		Mattox, Christopher R.
Bail Set - Katzenell, Elijah Joseph			
1	01/10/2024		Court of Common Pleas - Delaware County
Original Papers Received from Lower Court			
2	02/21/2024		Stollsteimer, Jack
Information Filed			

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Docket Number: CP-23-CR-0000137-2024

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ENTRIES

<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
3	02/21/2024		Donato, Arthur T. Jr.
Entry of Appearance			
4	02/21/2024		Donato, Arthur T. Jr. Katzenell, Elijah Joseph
Appearance and Waiver of Arraignment			
2	03/25/2024		Katzenell, Elijah Joseph
Waiver of Rule 600 and Speedy Trial Rights Filed			
3	03/25/2024		Brennan, Mary Alice
Criminal Notice Form Filed: Trial/Status 05/15/24 @9 CRTRM 5, Judge Brennan			
3	05/15/2024		Katzenell, Elijah Joseph
Waiver of Rule 600 and Speedy Trial Rights Filed			
4	05/15/2024		Brennan, Mary Alice
Criminal Notice Form Filed; Trial 06/24/24 @9 Crtrm 5, Judge Brennan			
1	05/16/2024		Brennan, Mary Alice
Criminal Notice Form Filed; Trial/Status 06/24/24 @9 CRTRM 5 Judge Brennan			
2	05/16/2024		Katzenell, Elijah Joseph
Waiver of Rule 600 and Speedy Trial Rights Filed			
1	06/24/2024		Katzenell, Elijah Joseph
Waiver of Rule 600 and Speedy Trial Rights Filed			
2	06/24/2024		Brennan, Mary Alice
Criminal Notice Form Filed; Trial/Status 09/16/24 @9 CRTRM 5, Judge Brennan			
1	09/16/2024		Brennan, Mary Alice
Guilty Plea - Negotiated			
2	09/16/2024		Katzenell, Elijah Joseph
Guilty Plea Statement Filed			
3	09/16/2024		Katzenell, Elijah Joseph
Statement of Post-Sentence Rights Filed			

COURT OF COMMON PLEAS OF DELAWARE COUNTY**DOCKET**

Docket Number: CP-23-CR-0000137-2024

CRIMINAL DOCKET

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ENTRIES

<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
4	09/16/2024		Brennan, Mary Alice
Addendum to Guilty Plea Statement Sexually Violent Offenders: 42Pa.C.S. 9791, Et Seq.			
5	09/16/2024		Brennan, Mary Alice
General Rules, Regulations and Conditions Governing Adult Probation/Parole			
6	09/16/2024		Brennan, Mary Alice
EHM-General Rules, Regulations and Conditions Governing Adult Probation/Parole			
7	09/16/2024		Brennan, Mary Alice
Special-General Rules, Regulations and Conditions Governing Sex Offender on Adult Probation/Parole			
8	09/16/2024		Brennan, Mary Alice
Order - Sentence/Penalty Imposed			
1	09/30/2024		Brennan, Mary Alice
Guideline Sentence Form - Regular			
2	09/30/2024		Court of Common Pleas - Delaware County
Entry of Civil Judgment			
1	12/01/2024		Unknown Filer
Praecipe to Satisfy Judgment			

COURT OF COMMON PLEAS OF DELAWARE COUNTY**DOCKET****Docket Number: CP-23-CR-0000137-2024****CRIMINAL DOCKET****Court Case**

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CASE FINANCIAL INFORMATION

Last Payment Date: 12/10/2024

Total of Last Payment: -\$28.00

Katzenell, Elijah Joseph Defendant	<u>Assessment</u>	<u>Payments</u>	<u>Adjustments</u>	<u>Non Monetary Payments</u>	<u>Balance</u>
Costs/Fees					
ATJ	\$6.00	(\$6.00)	\$0.00	\$0.00	\$0.00
CJES	\$2.50	(\$2.50)	\$0.00	\$0.00	\$0.00
Clerk of Courts - Felony (Delaware)	\$241.00	(\$241.00)	\$0.00	\$0.00	\$0.00
Commonwealth Cost - HB627 (Act 167 of 1992)	\$25.90	(\$25.90)	\$0.00	\$0.00	\$0.00
Costs of Prosecution - CJEA	\$50.00	(\$50.00)	\$0.00	\$0.00	\$0.00
County Court Cost (Act 204 of 1976)	\$37.80	(\$37.80)	\$0.00	\$0.00	\$0.00
Crime Victim Services and Compensation (Act 77 of 1988)	\$60.00	(\$60.00)	\$0.00	\$0.00	\$0.00
DNA Detection Fund (Act 185-2004)	\$250.00	(\$250.00)	\$0.00	\$0.00	\$0.00
Domestic Violence Compensation (Act 44 of 1988)	\$10.00	(\$10.00)	\$0.00	\$0.00	\$0.00
Firearm Education and Training Fund	\$5.00	(\$5.00)	\$0.00	\$0.00	\$0.00
JCPS	\$21.25	(\$21.25)	\$0.00	\$0.00	\$0.00
Judicial Computer Project	\$8.00	(\$8.00)	\$0.00	\$0.00	\$0.00
OAG - JCP	\$2.50	(\$2.50)	\$0.00	\$0.00	\$0.00
State Court Costs (Act 204 of 1976)	\$17.30	(\$17.30)	\$0.00	\$0.00	\$0.00
Automation OJS Fee (Delaware)	\$5.00	(\$5.00)	\$0.00	\$0.00	\$0.00
District Attorney (Delaware)	\$55.00	(\$55.00)	\$0.00	\$0.00	\$0.00
Sheriff (Delaware)	\$40.00	(\$40.00)	\$0.00	\$0.00	\$0.00
OSP (Delaware) (Act 77 of 2022)	\$3,360.00	(\$3,360.00)	\$0.00	\$0.00	\$0.00
Photocopy Fee (Delaware)	\$28.00	(\$28.00)	\$0.00	\$0.00	\$0.00
Costs/Fees Totals:	\$4,225.25	(\$4,225.25)	\$0.00	\$0.00	\$0.00
Grand Totals:	\$4,225.25	(\$4,225.25)	\$0.00	\$0.00	\$0.00

** - Indicates assessment is subrogated

EXHIBIT B

18 Pa.C.S. § 3126

Pa.C.S. documents are current through 2024 Regular Session Act 151; P.S. documents are current through 2024 Regular Session Act 151

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes (§§ 101 — 9901) > Title 18. Crimes and Offenses (Pts. I — III) > Part II. Definition of Specific Offenses (Arts. A — G) > Article B. Offenses Involving Danger to the Person (Chs. 23 — 32) > Chapter 31. Sexual Offenses (Subchs. A — C) > Subchapter B. Definition of Offenses (§§ 3121 — 3133)

§ 3126. Indecent assault.

(a) Offense defined. — A person is guilty of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and:

- (1)** the person does so without the complainant's consent;
- (2)** the person does so by forcible compulsion;
- (3)** the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- (4)** the complainant is unconscious or the person knows that the complainant is unaware that the indecent contact is occurring;
- (5)** the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
- (6)** the complainant suffers from a mental disability which renders the complainant incapable of consent;
- (7)** the complainant is less than 13 years of age; or
- (8)** the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

(b) Grading. — Indecent assault shall be graded as follows:

- (1)** An offense under subsection (a)(1) or (8) is a misdemeanor of the second degree.
- (2)** An offense under subsection (a)(2), (3), (4), (5) or (6) is a misdemeanor of the first degree.
- (3)** An offense under subsection (a)(7) is a misdemeanor of the first degree unless any of the following apply, in which case it is a felony of the third degree:
 - (i)** It is a second or subsequent offense.
 - (ii)** There has been a course of conduct of indecent assault by the person.
 - (iii)** The indecent assault was committed by touching the complainant's sexual or intimate parts with sexual or intimate parts of the person.
 - (iv)** The indecent assault is committed by touching the person's sexual or intimate parts with the complainant's sexual or intimate parts.

§ 3126. Indecent assault.

History

Act 1972-334 (S.B. 455), P.L. 1482, § 1, approved Dec. 6, 1972, eff. in 6 months; Act 1976-53 (H.B. 580), P.L. 120, § 1, approved May 18, 1976, eff. in 30 days; [Act 1990-4](#) (H.B. 1120), P.L. 6, § 6, approved Feb. 2, 1990, eff. in 60 days; Act 1995 Special Session-10 (S.B. 2), P.L. 985, § 9, approved Mar. 31, 1995, See section of this act for effective date information; [Act 2005-76](#) (H.B. 1400), P.L. 412, § 1, approved Nov. 23, 2005, eff. in 60 days.

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18 Pa.C.S. § 3121

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§ 3121. Rape.

(a) Offense defined. — A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant:

- (1)** By forcible compulsion.
- (2)** By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution.
- (3)** Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring.
- (4)** Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.
- (5)** Who suffers from a mental disability which renders the complainant incapable of consent.
- (6)** (Deleted by amendment).

(b) Additional penalties. — In addition to the penalty provided for by subsection (a), a person may be sentenced to an additional term not to exceed ten years' confinement and an additional amount not to exceed \$ 100,000 where the person engages in sexual intercourse with a complainant and has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, any substance for the purpose of preventing resistance through the inducement of euphoria, memory loss and any other effect of this substance.

(c) Rape of a child. — A person commits the offense of rape of a child, a felony of the first degree, when the person engages in sexual intercourse with a complainant who is less than 13 years of age.

(d) Rape of a child with serious bodily injury. — A person commits the offense of rape of a child resulting in serious bodily injury, a felony of the first degree, when the person violates this section and the complainant is under 13 years of age and suffers serious bodily injury in the course of the offense.

(e) Sentences. — Notwithstanding the provisions of section 1103 (relating to sentence of imprisonment for felony), a person convicted of an offense under:

- (1)** Subsection (c) shall be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years.
- (2)** Subsection (d) shall be sentenced up to a maximum term of life imprisonment.

History

§ 3121. Rape.

Act 1972-334 (S.B. 455), P.L. 1482, § 1, approved Dec. 6, 1972, eff. in 6 months; Act 1984-230 (H.B. 281), P.L. 1210, § 1, approved Dec. 21, 1984, eff. in 60 days; Act 1995 Special Session-10 (S.B. 2), P.L. 985, § 3, approved Mar. 31, 1995, See section of this act for effective date information; [Act 1997-65](#) (H.B. 1125), P.L. 621, § 2, approved Dec. 19, 1997, eff. in 60 days; [Act 2002-162](#) (H.B. 976), P.L. 1350, § 2, approved Dec. 9, 2002, eff. in 60 days; [Act 2002-226](#) (S.B. 1402), P.L. 1953, § 1.1, approved Dec. 16, 2002, eff. in 60 days.

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18 Pa.C.S. § 3124.1

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§ 3124.1. Sexual assault.

Except as provided in section 3121 (relating to rape) or 3123 (relating to involuntary deviate sexual intercourse), a person commits a felony of the second degree when that person engages in sexual intercourse or deviate sexual intercourse with a complainant without the complainant's consent.

History

Act 1995 Special Session-10 (S.B. 2), P.L. 985, § 8, approved Mar. 31, 1995, See section of this act for effective date information.

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